CONTROL OF A LABOR UNION — BY WHOM, OVER WHAT?

SIDNEY E. COHN AND DAVID LUBELL*

There is much confusion, even among the well-informed, about the meaning of the word "control" when used in the trade union sense. And there is reason for the confusion. The very word—control—carries with it conflicting connotations. It means good or evil, depending upon who does the controlling and for what purpose. It means to regulate; it means to dominate; it means to curb; it means to guide.

In order to understand the problems of control as the word is used in trade union terminology, it is necessary to examine the basic structure of the trade union movement. The popular concept is that the AFL-CIO "controls" the destinies of the organizations chartered by it and is responsible for their deeds and misdeeds.

The history of the AFL and the CIO proves the contrary. Prior to the adoption of the Code of Ethical Practices by the AFL-CIO, it was the pro forma answer of the AFL or the CIO that it did not and could not control the internal affairs of any international that was chartered by it, and even after the passage of the Code of Ethical Practices, the AFL-CIO has not attempted to control the activities of its chartered affiliates but reserves the right to withdraw the charter from such affiliate upon conviction of a violation of the Code of Ethical Practices, a right very sparingly used.

The law generally recognizes the local union as the creature of the international.[1] With the creation comes the implied agreement by the local and its members to operate under and be governed by the provisions of the international constitutions. The international union attempts to exercise a direct control over the affairs of its locals, and the constitution of most international unions usually contains a whole series of provisions by which this control is theoretically safeguarded. The basic "boiler plate" provisions usually found in these international constitutions are:

1. The right to change the jurisdiction of the local union.[2]
2. The right to control funds, property and collective bargaining rights of the local unions.
3. Provisions that in the event of the dissolution, secession or revoca-

* Members of the New York Bar.

1 Alexion v. Hollingsworth, 289 N.Y. 91, 43 N.E.2d 825 (1942).

2 See, *e.g.*, art. XV, § 2 of the Constitution of the International Brotherhood of Electrical Workers, AFL-CIO, and art. VII, § 6 of the Constitution of the Amalgamated Clothing Workers of America, AFL-CIO.

tion of a charter, all of the properties of the local shall revert to the international.[3]

4. Prohibition against dissolution or secession as long as seven members remain in good standing and desire to retain the charter. (Some locals have as many as 30,000 members.)[4]
5. Prohibition against the dissolution of the international union as long as three local unions are willing to remain affiliated with the international.[5]
6. Right to discipline the local union and its officials.[6]
7. Right to establish trusteeships over local unions.[7]

The built-in constitutional provisions for control give rise to the basic questions, "Who controls the international union?" and "Are there any counter controls which local unions effectively exercise over the international?" To answer these questions intelligently it is necessary to examine the widespread notion that an international union is actually controlled either by a dictator or, at best, by an oligarchy subservient to dictators.

Free association of the words "Teamsters Union" during the Roosevelt era meant "Dan Tobin's Teamsters." During the early days of the Eisenhower administration, Teamsters and Dave Beck were synonyms. As an aftermath of the McClellan Committee hearings, Jimmy Hoffa is the new synonym for the Teamsters Union. The tendency on the part of the public to merge the individual and a union into one is not confined to the Teamsters. Garment workers means David Dubinsky, longshoremen means Harry Bridges, New York Hotel Trades Council means Jay Rubin, auto workers means Walter Reuther, and the AFL-CIO means George Meany. These men and their counterparts are pictured as labor union bosses beyond control, who must hereafter be controlled, and the paths of control lie through legislation and the courts.

Undeniably strong labor leaders wield enormous influence in

[3] See, *e.g.*, art. XIV, § 8 of the Constitution of the Bakery and Confectionary Workers International Union of America, and art. X, § 28 of the Hotel and Restaurant Workers International Union, AFL-CIO.

[4] See, *e.g.*, art. XIV, § 22 of the Constitution of the Bakers International, and art. VII, § 7 of the Constitution of the Amalgamated Clothing Workers.

[5] See, *e.g.*, art. I, § 4 of the Constitution of the International Hotel and Restaurant Workers.

[6] See, *e.g.*, art. IX of the Constitution of the United Steelworkers of America, CIO, and art. IV, § 8 of the Constitution of the International Brotherhood of Electrical Workers.

[7] See, *e.g.*, art. XX, §§ 4(a) and 4(d) of the Bakers International Constitution. For a more detailed examination of these powers, see Cohn, "The International and the Local Union," 11 N.Y.U. Annual Conference on Labor 7 (1959).

their international, but control of the international has always been subject to counter control by the courts and by an evergrowing system of administrative regulations, both federal and state.

A. Control by the Courts—General

One important source of restriction upon unbridled exercise of power by the international is the brake provided by the common law.

The early view of the state common law was strictly legal—to hold that the international constitution and bylaws were a contract between the union and its members which controlled the terms upon which membership and accruing rights in the union could be obtained or lost. The New York Court of Appeals aptly described and adopted this view in *Polin v. Kaplan*:[8]

> The Constitution and by-laws of an unincorporated association express the terms of a contract which define the privileges secured and the duties assumed by those who have become members. As the contract may prescribe the precise terms upon which a membership may be gained, so may it conclusively define the conditions which entail its loss.

This approach, while primarily strengthening the hand of the international, also provided protection to the local and the member against actions by the international not in accordance with or contrary to the constitution and bylaws.[9] This standard finds partial recognition in recent federal labor legislation.[10]

With the increasing perfection of new and overreaching methods of control by the international in accordance with (and actually furthered by) the union constitution,[11] the common law courts increasingly intervened on broad equity grounds to impose restraints upon international actions contrary to justice. Again the New York court provides an excellent statement of this attitude. In *Irwin v. Possehl*,[12] the court stated:

> The constitution and laws of every labor organization are to be judged and construed in this state and country according to well-conceived ideals and principles of law, ordained by a democratic people proud of their heritage and zealous of the protection of

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[8] 257 N.Y. 277, 281, 177 N.E. 833, 834 (1931).

[9] Polin v. Kaplan, *supra* note 8; Fanara v. Int'l Bhd. of Teamsters, 205 Misc. 538, 128 N.Y.S.2d 449 (Sup. Ct. 1954); Canfield v. Moreschi, 182 Misc. 195, 49 N.Y.S.2d 903 (Sup. Ct. 1943).

[10] See § 302 of the Landrum-Griffin Act, 73 Stat. 531 (1959), 29 U.S.C. § 462 (Supp. I, 1959).

[11] See, *e.g.*, Feller v. Egelhofer, 125 N.Y.S.2d 816 (Sup. Ct. 1953); Steinmiller v. McKeon, 21 N.Y.S.2d 621 (Sup. Ct. 1940), *aff'd*, 261 App. Div. 899, 26 N.Y.S.2d 491 (1941), *aff'd*, 288 N.Y. 508, 41 N.E.2d 925 (1942).

[12] 143 Misc. 855, 858, 257 N.Y. Supp. 597, 601 (Sup. Ct. 1932).

> their rights of equal opportunity, of voice in the selection of local and general officials, in taxation, the appropriation and expenditure of money for governmental purpose, and of the right and opportunity of assembly and freedom of speech.

This "equity" concept of court restraints upon the international's action has found ever widening acceptance and use, particularly in the legal battles against bureaucracy.[13]

In *Crawford v. Newman*,[14] the New York court recently reaffirmed the broad equity position, stating:

> It is unconscionable to hold that, because a written contract does not expressly so provide, that a contracting party may not, without breaching the contract, disaffiliate from a corrupt and dishonest association. This is especially so when there is at stake the welfare of thousands of members of a union, together with the public confidence so essential to maintain peaceful and friendly relations with businessmen, big and small.

The doctrine has been invoked by the courts to prevent the literal use of constitutional provisions by the international for the purpose of oppressing the local and its members.[15]

B. Controls by the Local Union and Local Membership

1. Modes of Control

Absent the effective controls embodied in the written constitution and bylaws, the core of control exercised by the local is through the means of its day-to-day relationship with the workers and the employer. This is the backbone of trade union power.

The worker in the shop will usually have contact only with the local leaders and will give his allegiance to that leadership and the local. These leaders are home-grown, having arisen from the local shop in most instances. The international may be a stranger or even an imposing outsider to the member.

For the most part, the employer deals with the local and its leadership in day-to-day operations and negotiations. The very preference of the employer to deal with the local leadership, as persons he knows

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[13] Illustrative of the use of this equity concept are the New York sandhog cases: Dusing v. Nuzzo, 262 App. Div. 781, 26 N.Y.S.2d 345 (1941); 177 Misc. 35, 29 N.Y.S.2d 882 (Sup. Ct. 1941), *modified*, 263 App. Div. 59, 31 N.Y.S.2d 849 (1941); 178 Misc. 965, 37 N.Y.S.2d 334 (Sup. Ct. 1942), *aff'd*, 265 App. Div. 989, 40 N.Y.S.2d 334 (1943), *modified*, 182 Misc. 264, 291 N.Y. 81, 44 N.Y.S.2d 402 (1943).

[14] 13 Misc. 2d 198, 202, 175 N.Y.S.2d 903, 907 (Sup. Ct. 1958), *aff'd, mem.*, 8 App. Div. 2d 789, 188 N.Y.S.2d 943 (1959).

[15] Garcia v. Ernst, 101 N.Y.S.2d 683 (Sup. Ct. 1950); O'Neill v. United Plumbers, 348 Pa. 531, 36 A.2d 325 (1944); Liming v. Maloney, 32 Tenn. App. 632, 225 S.W.2d 276 (1949).

and has been dealing with, becomes significant in an international-local dispute where the employer, asserting his contractual rights, will support the local union.

The right of certification as collective bargaining representative under the National Labor Relations Act[16] is most often vested in the local union. The extent to which this statutory right supersedes the typical provision of the union constitution that the international is entitled to the collective bargaining rights has been the subject of apparently conflicting adjudication.[17]

A final means of control exercised by the local is the power of secession. This move, by which the local membership disaffiliates en masse from the international and re-establishes itself as an independent local or affiliates with another international, has become a frequent weapon by dissident locals against bureaucratic internationals. The weapon's major obstacle is the continued validity of the "seven-member" rule, incorporated either in the constitution and bylaws or the state common law. Some courts avoid the seven-member bar to disaffiliation by ruling that the facts are insufficient to show seven remaining members.[18] A lower court's attempt to rule that the doctrine was against public policy and invalid met with stern rebuke by the appellate court.[19] In general, the present view of this court apparently would tend to restrict the effectiveness of the seven-member principle by holding it effective to retain the local's designation but not effective to prevent the vast majority of the local's members, who have disaffiliated, from taking with them the assets of the local and the pension and welfare funds.[20]

2. *Areas of Control*

The three main areas over which the local attempts to exercise control and power are: the pension and welfare rights, the assets and funds of the local, and collective bargaining rights. Only the first two of these areas are discussed here.

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[16] Section 9(a) of the National Labor Relations Act, 49 Stat. 453 (1935), 29 U.S.C. § 159 (1958) states: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purpose shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . ."

[17] *Compare,* NLRB v. Harris-Woodson Co., 179 F.2d 720 (4th Cir. 1950) *with* Carpinterina Lemon Ass'n v. NLRB, 240 F.2d 554 (9th Cir. 1956).

[18] Crawford v. Newman, *supra* note 14.

[19] Bradley v. O'Hare, 19 Misc. 2d 612, 188 N.Y.S.2d 124 (Sup. Ct. 1959), *rev'd,* 11 App. Div. 2d 15, 202 N.Y.S.2d 141 (1960).

[20] *Ibid.*

a. Pension and Welfare Funds

The pension and welfare funds present a difficult and involved area. These funds are playing an increasingly important role in our society and economy. They are a source of security to workers in combatting fears of a poverty haunted future. They provide a sizeable source of consumer purchasing power to employees receiving benefits. They are a source by which the union and its members are knitted together. And, perhaps most significantly they provide an awesome source of power in the hands of those controlling the funds through the very size of the funds,[21] and the opportunity of abuse of a character not unfamiliar to those following the exposés of governmental and business corruption.

The threshold issue raises the all-important question, *"Who owns the funds"?* The interested parties include contributing employers, the union members, the local and the international. The federal law—the Federal Welfare and Pension Plans Disclosure Act,[22]—provides no clue to the answer of this question. In fact, that act, in essence, only sets forth certain reporting requirements resulting in little more than increased paper work.[23]

Several recent New York cases have thrown light upon the issue of pension and welfare funds and the rights to such funds.

In *Whelan v. O'Rourke,*[24] the court was concerned with whether the pension funds follow the workers. In that case, the Teamsters International evaluated and reorganized the jurisdiction of its Local 282 by transferring approximately one thousand of the members of that local to Local 807. Local 282 had a pension plan and fund under which contributions had been theretofore made on behalf of the thousand transferred workers. Local 807 fund officials offered to grant the transferred workers all rights under the Local 807 plan (which was identical to the Local 282 plan in all material respects) and all accumulated credits if Local 282 would transfer the funds. The fund officials of Local 282 refused to transfer the funds. The matter was sent to an arbitrator who ruled in favor of transfer of funds. Despite provisions that his decision was "final and binding and shall be adopted," Local 282 refused to comply and a declaratory judgment

21 In the single year of 1954, $6,846,200,000 was put into welfare and pension funds. Final Report of Sub-Committee on Welfare and Pension Funds, S. Rep. No. 1734, 84th Cong. 2d Sess. 11 (1956).

22 72 Stat. 997 (1958), 29 U.S.C. § 301 (Supp. I, 1959).

23 The policy of the act stated in § 2(b), 72 Stat. 997 (1958), 29 U.S.C. § 301(b) (Supp. I, 1959) is solely to require disclosure to participants of the plans of "financial and other information" in regard to such plans.

24 5 App. Div. 2d 156, 170 N.Y.S.2d 284 (1958).

was sought. The lower court granted the declaratory judgment on plaintiffs' motion for summary judgment. This decision was affirmed on appeal. The appellate court recognized "that the trust agreement does not precisely contemplate the situation here under review" but it found "an arsenal of authority sufficient to comprehend the decision of the arbitrator which constituted 'the vote of the trustees.' "[25]

The court rejected the argument of Local 282's union trustees that they would be willing to administer the funds that had been collected for the thousand transferred members and make distribution as the members qualified for the benefits. The court's rejection is based upon its disability to substitute its judgment as to the course to be taken for the judgment of the arbitrator which constituted the judgment of the trustees.[26] In addition, under the federal law the pension fund must be jointly administered by "representatives of the employees."[27] The transfer of the thousand members from Local 282 to Local 807 terminated the status of Local 282 officers as "representatives of the employees." Local 282 no longer had bargaining rights with the employees of the thousand transferred men. Therefore, it would appear on the merits that the federal law precludes acceptance of Local 282's contention.

The decision goes as far as to indicate that at least where the majority of trustees agree, the pension funds belong to the worker and therefore will follow him. Whether the same result would follow if the majority of trustees had voted against transferring the welfare funds to the workers' new local is an open question.

Nicoletti v. Essenfield[28] concerns welfare funds, rather than pension monies, of a teamster local. Approximately one-third of Local 202's membership was transferred to newly created Local 277 in September, 1954. But the employers continued to contribute to Local 202's fund on behalf of these employees until March, 1955. At that time a new agreement became operative and the employers commenced contributions to the new Local 277 welfare fund, administered by Local 277 representatives and the employers. Negotiations commenced to have the proportion of the $660,000 of welfare monies then in the Local 202 fund, attributable to the transferred employees, conveyed to Local 277. In the midst of negotiations, an action was commenced to restrain Local 202 trustees from transferring the said proportion of the fund. The court, in effect, ruled that the welfare

[25] *Id.* at 160, 170 N.Y.S.2d at 287.

[26] *Ibid.*

[27] Labor-Management Relations Act § 302(c)(5)(b), 61 Stat. 157 (1947), 29 U.S.C. § 186(c)(5)(b) (1958).

[28] 11 Misc. 2d 197, 171 N.Y.S.2d 373 (Sup. Ct. 1958).

funds belonged to the beneficiary employee, and held that Local 277 was entitled to the welfare funds collected for the transferred workers. The court stated:

> Plainly, however, where a reserve is accumulated in a welfare fund, the protection and advantages provided by that reserve should, in the absence of countervailing considerations, be enjoyed by the employees on whose behalf the reserve was accumulated. . . . This does not mean that an employee could lawfully demand that his *pro rata* portion of the reserve be paid directly to him; for his interest therein is only the equitable interest of a *cestui que trust.* Nor does it mean that there may not be circumstances under which an employee may lose even that equitable interest.[29]

Regardless of who is determined to control the pension and welfare funds, the common law has clearly declared that the controlling officers of the fund are fiduciaries impressed with a common law trustees' duties to the fund. Thus, in upholding the right to an accounting, the court has stated that union "fiscal officers have a fiduciary relationship to the members" of the union.[30]

In *Upholsterers Int'l Union v. Leathercraft Furniture Co.*,[31] the Pennsylvania Federal District Court stated the general scope of the fiduciary standard that the court will apply to the welfare fund:

> Whenever the trustees use, or attempt to use, directly or indirectly, the fund for purpose other than for the sole and exclusive benefit of the employee-members, this Court, when called upon, will enjoin the trustees from making the improper expenditure. The burdening of the fund with undue administrative expenses or lush salaries for union officials will not be tolerated; excessive restrictions, either in the insurance policies or the by-laws and regulations, or the providing of small benefits to the employee-members in proportion to the amount contributed by the employee parties or the premiums paid, taking into consideration the risks involved, will cause more than a lifting of the eyebrows. A provision in the by-laws or regulations denying the employee-members the right to resort to the Courts to protect their beneficial interests in the fund is of no legal effect.

The fiduciary concept has been applied to union welfare and pension funds in varied manners, including appointment of a new trustee of any insurance fund by the international union,[32] treatment of the welfare and retirement fund as a charitable beneficiary trust,[33] bequest to a railroad employees' pension fund being upheld as char-

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29 *Id.* at 200, 171 N.Y.S.2d at 377.

30 Dusing v. Nuzzo, *supra* note 13, at 38, 29 N.Y.S.2d at 885.

31 82 F. Supp. 570 (E.D. Pa. 1949).

32 Suffridge v. O'Grady, 84 N.Y.S.2d 211 (Sup. Ct. 1948).

33 Van Horn v. Lewis, 79 F. Supp. 541 (D.D.C. 1948).

itable,[34] sustaining an action against trustees for wrongfully withholding pensions,[35] and forbidding commingling of pension and welfare funds with general funds or use of such funds to make an unsecured loan to a corporation managed by union officers and owned by union members as beneficiaries.[36]

The battle in the Bakers Union is an example of pension and welfare fund issues arising in the context of secession. The pension fund of the Bakers is operated at a national level by the International Bakers and Confectionery Workers Union.[37] Continued membership in good standing in the international is a prerequisite for eligibility in the pension plan. After the international was ousted from the AFL-CIO when it refused to oust its president, James Cross, approximately fifty thousand members of the New York local of the international seceded and joined a newly created rival international union. The question remains what disposition is to be made of the pension funds attributable to these disaffiliated employees held by the international. The dilemma to the employees is clear. If they disaffiliate they stand in jeopardy of losing their pension rights and fund; if they remain in the international, they are parties to the continuance of the exposed corruption of the international. Any resolution of the issue must consider all the variants, including the situation where the international is democratic and "clean" and the local is racket-ridden.

b. Property and Assets of the Local

An indication of the trend of thinking of the courts is indicated in *Crawford v. Newman*,[38] involving the property and assets of the disaffiliated New York Bakers local. On broad grounds of public policy and equity, the court held that there was a valid disaffiliation from the international and that the assets and property belonged to the local. The court stated:

> A violation of the trust so reposed in labor leaders is in and of itself sufficient justification for a local union to call it quits. This is precisely what motivated the two local unions to disaffiliate from the International, and the record amply justifies their action. Had the locals disaffiliated for caprice or from *internecine* dispute it would have been another story.[39]

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[34] *In re* Tarrant's Estate, 38 Cal. 2d 42, 237 P.2d 505 (1951).

[35] Fornish v. Kennedy, 377 Pa. 370, 105 Atl. 67 (1954).

[36] Vaccaro v. Gentile, 138 N.Y.S.2d 872 (Sup. Ct. 1955).

[37] The fund covered 305,000 employees through forty-eight states and thousands of contributing employers.

[38] *Supra* note 14.

[39] *Id.* at 202, 175 N.Y.S.2d at 907.

Significantly, the decision avoids a storming of the citadel of the seven member doctrine. The court expressly held the evidence insufficient to show that seven members desired to remain in the old local. One may wonder whether the same decision would have resulted if the evidence showed seven, or some other negligible number of members who desired to remain in the local.

In the recent case of *Bradley v. O'Hare*,[40] the court was concerned with the legitimate purpose for which a local may effectively disaffiliate from its international taking its assets with it. The local, which had disaffiliated from the International Longshoremen's Union (ILA), while successful in the court below upon other grounds, argued in the appellate court that continuation of the ILA in the AFL-CIO was an implied condition of the local's affiliation with the international, and upon the breach of this condition there came into being "frustration of purpose" giving the local a legitimate legal basis for terminating the affiliation and taking its assets. The appellate division reversed, holding that the reason advanced was not sufficient and that in order to retain its assets, the disaffiliating local would have to show corruption in the ILA, even though the funds were collected from local members for local purposes.

The court rejected the argument of the lower court that the seven-member rule was contrary to public policy. After pointing out that at least nineteen of the twenty-seven internationals on the AFL-CIO Executive Council had such minimum member provisions, the court stated:

> An international and its constituent locals are nothing less than a system of private representative government for the performance of a very delicate and important function in the economy (see Isaacson, The Local Union and the International, 3 N.Y.U. Conf. on Labor, 493,494). They exist for the benefit of the worker members. If the international is to perform its function adequately, the right of the local to secede may be qualified even though the parochial interests of its own members might be served, momentarily, by disaffiliation.[41]

In spite of the continued validity given to the seven-member rule, the court would hold the provision no bar to a disaffiliation based on valid grounds with retention of the funds and assets in the disaffiliating local collected from and for the benefit of the local's members.

Apropos of the issues involved in the Bakers' national pension fund, is the statement of the court indicating the importance of the level at which the funds are collected:

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[40] *Supra* note 19.

[41] 202 N.Y.S.2d at 148.

> Assuming that the beneficial owners of union assets are the worker members and that the international has lost its trade-union character, one must still decide whether the beneficial interest is in the membership of the international or only in the membership of the local union. The answer will be contingent upon what assets are involved, their source, and the purpose for which they are committed. Also relevant may be such factors as the past relationship between the local and the international with respect to financial matters and the extent to which the local has functioned as an autonomous unit.[42]

In *Crocker v. Weil*,[43] action was brought by a trustee of a disaffiliated local union of the International Bakery and Confectionery Workers to obtain the funds of the local. In rendering a decision in the hearing on the merits,[44] the court upheld the trusteeship and awarded the trustee the assets of the local, holding: (a) the international constitution was a binding contract between the international and the local. Thus imposition of the trusteeship was justified since it was provided for in the constitution where there is disaffiliation. (b) The funds of the local, except the death benefit fund (which the court found the international had previously treated as a completely local matter), belong to the international since under their charters and the constitution, the locals are not substantially independent. (c) Continued affiliation in the AFL-CIO by the international was not an implied condition of the constitution or contract between the parties. (d) Maintaining corrupt officials in office by the international was not a breach of the constitution and did not free the local from the obligations of its contract. (e) The trusteeship, having been imposed in accordance with the constitution, was not a violation of title III of the Labor-Management Reporting and Disclosure Act. (f) The defense of unclean hands was not applicable since the alleged inequitable conduct had nothing to do with the dispute before the court.

Irrespective of the merit or lack of merit of the above cases, the divergent reasoning and approach indicates the continued conflict and parallel existence of the strict legal approach of *Crocker v. Weil* and the broad, equitable, public policy approach of *Bradley v. O'Hare*. The common law restrictions upon the local union are two-pronged. The first is from the cases, above discussed, where the courts have enforced the strict legal approach and upheld the rights granted the international by the union constitutions. The second prong is provided by the growing willingness of courts to intervene on behalf of the

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42 202 N.Y.S.2d at 155.

43 45 L.R.R.M. 2074 (Ore. Cir. 1959).

44 45 L.R.R.M. 2934 (Ore. Cir. 1960).

abused or oppressed individual member against the overreaching bureaucratic local.

C. Rank and File Movements of Membership

One of the most important (and least considered) forces restricting the abuse of power by both the international and local, and guaranteeing a democratic trade union is the rank and file movement of the membership. For example, wherever one turns in the labor history of anti-racketeering in New York, rank and file movements will be found in the forefront.

The break-up of the "stranglehold" of racketeers Dutch Schultz, Jules Martin and Paul Coulcher on the restaurant industry was ignited by rank and file leaders. The testimony of local officials was in large measure responsible for the successful criminal prosecution of the racketeers.[45] It is a striking example of courageous rank and file members dealing with racketeers and racketeering.

Likewise, the New York motion picture operators themselves took the meaningful steps in wresting control from the racketeers, when the members of Local 306 ousted Sam Kaplan as union president for corruption and denial of democratic rights.[46] The New Jersey building trades broke the control of Theodore M. Brandle by ousting his slate at the annual State Building Trades Council convention.[47]

Most dynamic in illustrating the potency of the interaction of rank and file movements with judicial remedies is the struggle of the New York area sandhogs against corrupt international officers. The New York City sandhogs were organized into Local 147 in 1938, bringing to an end a long period of factional disputes. The local at that time was an example of democracy evidenced by rank and file control. The racketeering in this instance came from the international officers. During this period great construction projects were proceeding in New York City, including the building of the Queens Midtown Tunnel. The temptations for the rewards arising from graft and corruption were great.

In April, 1939, the international president ordered the suspension of the elected officers of Local 147; the local was to be taken over by his associate Bove, all funds were to be turned over to Bove and further membership meetings were prohibited. When the rank and file refused to obey these directives, the international president suspended the local and directed Bove to take over its affairs and funds. He notified the banks where the local had accounts that no checks were

[45] People v. Coulcher, 255 App. Div. 954, 8 N.Y.S.2d 162 (1938).

[46] N.Y. World-Telegram, May 21, 1934; See Polin v. Kaplan, *supra* note 8.

[47] N.Y. Times, May 22, 1934.

to be honored except by Bove's signature. Refusing to capitulate to the international, the rank and file went to court and obtained an injunction against the international's action that had been taken without charges, without a hearing, and without a trial.

The international was not yet defeated. It attempted next to shift the work in New York City from Local 147 to two other locals which it controlled. At the international convention in St. Louis, the international president presented his charges and the convention rubber stamped them by authorizing him to press his charges before a trial board composed of the members of the international executive board. The rank and file continued to fight for a fair hearing. But their demands for particulars were denied. As was to be expected, the local and its leadership was found guilty on all counts.

Again the rank and file turned to courts to thwart the attempt by the international to control the local. The civil equitable remedy granted to the local and its leadership was its trump card. In *Moore v. Moreschi,*[48] the local decisively beat the international's attempt to control it and a permanent injunction was granted. The local and the rank and file had broken the attempt to oust its democratic leadership from control of Local 147.

The situation upstate with Local 17 in Newburgh was somewhat different. Again, the international wanted to control a local for its own ends. In their efforts, they had the active support of one Nuzzo, secretary-treasurer and business agent of Local 17. For a long period of time the members of the local had protested to the international regarding Nuzzo's behavior, ranging from accusations that he accepted bribes from contractors to irresponsibility and incompetence.

In October and November, 1937, the international, in a decision to thwart the growing protest, ordered that no more meetings of the local be held and that nothing be done without the approval of Bove. Nuzzo was kept in his position and continued to collect money from the members. Further, no member of the local could get work without first obtaining a card from Nuzzo. Now in the hands of the corrupt racketeers, Local 17 was pillaged and robbed. Nuzzo collected between $200,000 and $600,000 in funds. Yet there was only $107.93 in the local treasury. The rank and file once again utilized the potent power of the equity court. They obtained an order for an election and accounting of funds.[49] At the court-ordered election, the rank and file scored a resounding victory. Nuzzo and his slate were defeated. But on the pretense of complaints from Nuzzo, Moreschi deputized his

[48] 179 Misc. 475, 39 N.Y.S.2d 208 (Sup. Ct. 1942), *aff'd,* 265 App. Div. 989, 40 N.Y.S.2d 334 (1943), *modified,* 291 N.Y. 81, 182 Misc. 264, 44 N.Y.S.2d 402 (1943).

[49] Dusing v. Nuzzo, *supra* note 13.

followers to take over the local for the purposes of "investigation" and to preside at meetings. Further, he deprived the local of job jurisdiction. The active rank and file again fought and in *Canfield v. Moreschi*,[50] the court granted an injunction prohibiting the international from interfering with the leadership and operation of Local 17 by its own elected officers. As a fitting climax to the civil actions Nuzzo was indicted and convicted of grand larceny, petit larceny, and forgery.[51]

The campaigns against the racketeers in the labor movement continues with vigor—both at the international and local[52] levels. The vigor of these activities from within the labor movement and the forceful assistance of criminal law prosecutions and common law remedies provide a decisive control over the abuse of power.

D. Control by the AFL-CIO

The AFL-CIO is a new force in the interaction of the international, the local and the membership. This is of relatively recent vintage and a shift of emphasis from the traditional view of the labor federations as loose federations of autonomous national and international unions.

The basic means of control exercised by the AFL-CIO is the power to expel the international or national union from the Federation for good cause. This power has resulted from the adoption of a Code of Ethical Practices by the Federation. To complement the power exerted by the expulsion is the Federation's recognized power to establish a new rival international with parallel jurisdiction with the expelled international and to win the employees away from the expelled international into the new union. This was generally the mode of control used in the expulsions by the Federation in the late 1940's, and in the recent expulsions for corruption. Alternatively, the Federation has been able to use the overlapping jurisdiction of existing national unions against the expelled international.

Of less drastic nature is the Federation's use of the threat of suspension or expulsion to correct an unsatisfactory situation within

[50] 180 Misc. 153, 40 N.Y.S.2d 757 (Sup. Ct. 1943) and 182 Misc. 195, 49 N.Y.S.2d 903 (Sup. Ct. 1943), *modified*, 268 App. Div. 64, 48 N.Y.S.2d 668 (1944), *aff'd* 294 N.Y. 632, 64 N.E.2d 177 (1945).

[51] People v. Nuzzo, 267 App. Div. 785, 46 N.Y.S.2d 103 (1943), *rev'd on other grounds*, 294 N.Y. 227, 62 N.E.2d 47 (1945).

[52] At the local level, the campaign against the racketeers has also been vigorous. Various locals of the Retail Clerks International Union have revolted against corrupt local leadership, including Local 1648 in New York, whose leadership was sent to jail for extortion and the expulsion of the leaders of several Retail Clerks Locals for exploiting union members from minority groups, Newsweek Magazine, April 29, 1957.

the union. Empirically, this power of control has not appeared to be effective. The result has been that in most instances the Federation has reverted to the expulsion of the international.

Fundamentally, this control by the AFL-CIO rests upon the extent of public appeal and prestige that affiliation with the Federation carries and the disgrace in the eyes of union members of expulsion of the international from the AFL-CIO. Expulsion from the Federation is not of itself such a frustration of the relationship between the international and the local as legally to justify secession by the local.[53] In most instances such expulsion has been a significant factor in the decline and demise of the international. But the most striking example is the failure of the AFL-CIO's power of expulsion in the Teamsters International situation. The Teamsters Union today remains a huge and powerful force, without any loss of membership, and with working arrangements with many segments of the labor movement within the AFL-CIO.

E. Control by Federal Agencies

So far the examination has been confined to controls exercised by intraunion forces as confined and defined by the common law. In addition there is the significant control exercised by federal agencies under federal statutes and the control exercised by the states and their agencies under state laws. A sketch of these powers indicates their scope and relevance.

1. Control by the National Labor Relations Board under the National Labor Relations Act

Besides the basic functions of the National Labor Relations Board [hereafter, Board] under the federal act to regulate and control the collective bargaining relationship between the union and the employer, the Board regulates and exercises power over areas within the domain of the relationship between the international, the local and the members. These areas include:

(a) Determination of who "owns" the collective bargaining contract where there is a conflict or split between the local and the international. The Board has most often held that the contract "belongs" to the local and not the international.[54]

(b) Supervision of representation elections.[55] Through such supervision, the Board exercises the potential power to exclude employer-dominated or racketeer-controlled paper locals, to give the employees a meaningful, democratic choice between rival unions as to which

[53] Bradley v. O'Hare, *supra* note 19; Crocker v. Weil, *supra* note 43.

[54] *Supra* note 17.

[55] National Labor Relations Act, § 10, #49 Stat. 453 (1935), 29 U.S.C. § 160 (1958).

union will represent them in securing and holding the collective bargaining rights, and to present a fair opportunity for an insurgent union to wrestle control away from a racketeer-led local. Obviously, this control is, at most, one intended to give the employees a fairly chosen collective bargaining representative. It cannot be a force to defeat racketeers. In fact, the too active and too broad use of the power of supervision of representation elections can frustrate the purposes of the labor act, cause unconscionable delay in the certification of a union, and actually permit an unrepresentative and disruptive minority to delay and thwart the employees in selecting their collective bargaining representative.

(c) Prior to the passage of the Landrum-Griffin Act, the Board exercised some degree of control through the section 9 filing requirements.[56] A detailed examination of this control exercised by the Board is outside the scope of this article. It is sufficient to note that alongside of its primary purposes of securing free collective bargaining between the employer and the union, as the representative of the employees, and protecting the process of representation elections, the Board's intrusion into the intraunion situation inevitably leads to yet another control of the union and another source of power conflict.

2. *Control by the Secretary of Labor*

The Landrum-Griffin Act[57] places the Secretary of Labor actively in the business of control over the intraunion relations between the international, the local and the membership. The position of the Secretary of Labor in the scheme of the act is central to both investigation and enforcement under the act.

Despite the broad powers granted to the Secretary of Labor under the Landrum-Griffin Act, and the long and onerous burdens placed upon trade unions by the provisions of the act, the Secretary's report for the nine month period from the effective date of the law, September 14, 1959, to the close of the fiscal year, June 30, 1960, strikingly reveals that little, if anything, has been done to correct the purported abuses in union election procedures for which the act was supposed to be a panacea. In fact, when placed in juxtaposition with court litigation, the report shows that the act is an invitation to mischievous, dilatory and disruptive machinations by disgruntled individ-

[56] Section 201(d) and (e) of the act, 73 Stat. 525 (1959), 29 U.S.C. §§ 158-59 (Supp. I, 1959), repeals §§ 9(f), (g) and (h) of the NLRA as amended, 61 Stat. 152 (1947), 29 U.S.C. §§ 158-59 (1958), and in effect transfers the area encompassed by the repealed subsections to the Secretary of Labor.

[57] Officially known as the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 530 (1959), 29 U.S.C. § 461 (Supp. I, 1959).

uals within a labor organization, and has little true relationship to the guaranteeing of free elections and the uprooting of a corrupt leadership.

The report notes the filing with the Secretary of Labor of 369 alleged violations of section 401 during the nine month period. Of these, 338 were filed by union members. 195 were against local unions and 139 against union officers.[58] But the report also states that:

> The majority of the complaints were prematurely filed, in that the internal administrative proceedings of the union had not been followed by the complainants as required by the Act. It is the policy of the Act to avoid premature involvement in election matters. Experience gained thus far indicates that most of the complaints filed with the BLMR area offices prior to an election are not refiled after the election. The Bureau has received numerous requests to furnish observers at the polls during election; however, the Act gives to the Bureau no such authority, and therefore such requests have been denied.[59]

There is no reported instance, either in the report or any of the law reports, of an action being commenced by the Secretary of Labor for violation of section 401.

The case litigation under title IV further accentuates the failure of the title's provisions to remedy election abuses and its inclination to compound proceedings and invite splinter harassment. The union member has no direct remedy in court against an executed union election, for it has been held that under the act he must first exhaust internal remedies and apply to the Secretary of Labor.[60] There appears no case[61] where the complainant was successful on the merits. The impact has been not to clean up abuses, since there has been a startling lack of success, but rather to harass the union's operation, cast suspicion upon the elected leadership, compel expenditure of union funds in litigation, and generally hamper the operation of the trade union.

A clear illustration of this impact is a recent case in New York involving Local 807 of the Teamsters. In that case,[62] the plaintiffs, opposition candidates for office in the election for local leadership,

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[58] Report of the Bureau of Labor Management Reports, Fiscal Year 1960 (Sept. 14, 1960), tables 9 and 10.

[59] *Id.* at 61-62.

[60] Myers v. Operating Engineers, 45 L.R.R.M. 3045 (D.C. Mich. 1960); Byrd v. Archer, 45 L.R.R.M. 2289 (S.D. Cal. 1959).

[61] The Teamster monitorship situation discussed *infra*, p. 192 where an executed local election was at last held up, is a unique exception, occurring prior to the effective date of the act.

[62] West v. Truck Drivers Local 807, C-4701 (S.D. N.Y. 1960).

brought an action under section 401(c) of the act, claiming that the defendant local had violated the act by: (1) the local's publishing and distributing a special election issue of "The 807 Teamster," which had a model ballot spread on pages 2 and 3, with the paper's usual masthead on the upper-lefthand corner of page 2, including the names of the officers of the union, the individual defendants; (2) placing the organization ticket, on which the defendants were candidates, on row A of the ballot and the plaintiffs' slate on row B of the ballot; and (3) holding the election at one polling place.

Significantly, Local 807, one of the largest Teamster Locals in the country, has a nation-wide reputation for honest and democratic trade unionism. Local 807's President, John Strong, and its Secretary-Treasurer, Thomas Hickey, are well-known leaders for democracy within the Teamsters International.[63] Thus, rather than being a weapon against the undemocratic union, the act was here being used by dissident elements to harass one of the outstanding examples of honest local trade unionism within the Teamsters International.

The suit was brought by the plaintiffs on November 29, 1960, to restrain an election to be held on December 4, 1960.[64] The first objection voiced by the plaintiffs was received by the defendants on November 28, 1960. The suit therefore had all the attributes of an eleventh-hour attempt to stop a pending election. The district court denied plaintiffs' application in full,[65] and the election proceeded as scheduled.

While the decision of the district court is clearly correct, the very institution of the proceeding and the invocation of the act reveals the mischief that can be caused by the act. The arguments raised by the plaintiffs obviously lacked merit. Yet, they were made the basis of a federal action under the federal statute. If the district court judge had not ruled off the bench, the potential disruptive impact of the act would have become a reality. Election delay, unwarranted expense of money by the local, and an unsettled situation would have resulted.

Under the Landrum-Griffin Act, the Secretary of Labor is given broad authority to conduct investigations and to take action against violence, threats of violence, embezzlement, misappropriation of funds and those practices which may be lumped together as racketeering

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[63] See Newsday Magazine, December 16, 1958.

[64] Section 401(c), 73 Stat. 532 (1959), 29 U.S.C. § 481 (Supp. I. 1959) provides for injunctive relief on petition of the individual members and does not interpose the Secretary of Labor prior to commencing court action.

[65] McMann, J., ruled off the bench, without a written opinion.

practices, particularly as these crimes may occur in the complex area of relationship between the international, the local and its members. Yet it is most significant that the first report exhibits most clearly the failure to deal with any of the purported abuses in internal affairs, let alone to check any of the alleged abuses. The act has cured none of the ills for which it was the nostrum, but it has clearly created additional procedural problems and provided new tactical weapons for those intent upon harassing unions and causing disruption.

F. Control Through Effective Criminal Law Enforcement

Racketeering is a question of crime, whether the racketeer is a union official, an employer, or one who preys on either unions, employers or both. Since labor racketeering is a question of crime, the most direct and effective method of eradicating it is through vigorous and conscientious enforcement of the state penal law and the federal criminal code. Where other means are used the result is inevitably, unintentional or otherwise, to restrict legitimate activities of the trade union. Further, the use of other means to deal with racketeering other than treating it as a crime, is to impose outside controls upon labor unions, the relationship of the international, local and member, and to place outside groups in the business of controlling and even "running" the labor union. The logical culmination is the court appointed, directed and imposed monitorship over the Teamsters International which, as will be shown *infra,* has solved no problem of racketeering and has exercised or attempted to exercise no control over every aspect of the intra union-member relationship.

An examination of effective criminal law enforcement reveals its potency in dealing with racketeering at its own level and defeating such racketeering. The New York experience is illustrative both because of the extent of experience in this area and the existence of vigorous law enforcement. Beginning as far back as the turn of the century[66] and continuing to the present, labor and industrial racketeers in New York State have been sent to jail by district attorneys invoking the arsenal of statutes contained in the New York Penal Law.[67] The principal weapons contained in the law are the provisions against

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[66] See People v. Hughes, 137 N.Y. 29 (1893); People v. Barondess, 133 N.Y. 649 (1892), *reversing* 61 Hun. 571, 16 N.Y. Supp. 436 (App. Div. 1891). The illustrious Sam Parks of the Building Trades was convicted of blackmail in 1903. Baker and Stannard, "The Trust's New Tool—The Labor Boss," McClure's Magazine November, 1903.

[67] People v. Chester, 4 Misc. 2d 949, 158 N.Y.S.2d 829 (Gen. Sess., 1957); People v. Cilento, 2 N.Y.2d 55, 156 N.Y.S.2d 673 (1956). Johnny Dio was convicted of extortion and conspiracy in 1958, receiving a 15-30 year sentence. N.Y. Times, January 9, 1958, p. 1.

bribery,[68] extortion,[69] larceny,[70] kickback,[71] conspiracy,[72] and interference with the right of a person to exercise a legal right,[73] as well as the obvious provisions against assault, manslaughter and murder.[74] The counterpart of these statutes is contained in the criminal law of practically every state.

In addition to the tremendous range of weapons contained in state penal laws, there are federal statutes, such as the Hobbs Anti-Racketeering Act[75] the penal sections of the Labor-Management Relations Act,[76] prosecution for violation of federal tax laws,[77] federal conspiracy laws and provisions forbidding use of the mails to defraud,[78] etc.

In recognizing the positive and crucial power exercised by effective criminal law enforcement in controlling racketeering and yet permitting "free-play" in the bona fide relationship between international, local,

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[68] N.Y. Penal Law, § 380. See People v. Chester, *supra* note 67; People v. Cilento, *supra* note 67; People v. Bock, 69 Misc. 543, 125 N.Y. Supp. 301 (Erie County Ct., 1910), aff'd, 148 App. Div. 899, 132 N.Y. Supp. 1141 (1911).

[69] N.Y. Penal Law §§ 850-52, 857. People v. Coulcher, 255 App. Div. 954, 8 N.Y.S.2d 162 (1938); People v. Brindell, 194 App. Div. 776, 185 N.Y. Supp. 533 (1921); People v. Weinsemer, 117 App. Div. 603, 102 N.Y. Supp. 579 (1917); People v. Hughes, *supra* note 66.

[70] N.Y. Penal Law § 1290. People v. Nuzzo, *supra* note 51; People v. Sealisi, 288 N.Y. 220, 42 N.E.2d 494 (1942); People v. Herbert, 162 Misc. 817, 295 N.Y. Supp. 351 (Sup. Ct. 1937).

[71] N.Y. Penal Law § 962. People v. Fay, 182 Misc. 358, 43 N.Y.S.2d 826 (Sup. Ct. 1943).

[72] N.Y. Penal Law § 580(1)(5)(6). People v. Coulcher, *supra* note 69; People v. Kaplan, 143 Misc. 91, 251 N.Y. Supp. 874 (Gen. Sess. 1932), 240 App. Div. 72, 264 N.Y. Supp. 542 (1934), *aff'd*, 264 N.Y. 675, 191 N.E. 621 (1934).

[73] N.Y. Penal Law § 530. People v. Kaplan, *supra* note 72.

[74] People v. Bucholter, 289 N.Y. 181, 45 N.E.2d 225 (1942).

[75] 60 Stat. 420 (1946), 18 U.S.C. § 195 (1958). The act has been used to cover a variety of corrupt activities. See, *e.g.*, United States v. Masiello, 235 F.2d 279 (2d Cir. 1956), *cert. denied*, 352 U.S. 882 (1956); United States v. Lowe, 234 F.2d 919 (3d Cir. 1956), *cert. denied*, 352 U.S. 838 (1956); United States v. Varlack, 225 F.2d 665 (2d Cir. 1955); Dale v. United States, 223 F.2d 181 (7th Cir. 1955); Bianchi v. United States, 219 F.2d 182 (8th Cir. 1955), *cert. denied*, 349 U.S. 915 (1955); Hulahan v. United States, 214 F.2d 441 (8th Cir. 1954), *cert. denied*, 348 U.S. 856 (1954); Nick v. United States, 122 F.2d 660 (8th Cir. 1941), *cert. denied*, 318 U.S. 687 (1941).

[76] Labor-Management Relations Act § 302, 61 Stat. 157 (1947), 29 U.S.C. § 186 (1958). United States v. Ryan, 350 U.S. 299 (1956); Brennan v. United States, 240 F.2d 253 (8th Cir. 1957).

[77] See United States v. Commerford, 64 F.2d 28 (2d Cir. 1933) *cert. denied*, 289 U.S. 759 (1933).

[78] On December 5, 1960, James Hoffa was indicted for mail fraud arising from the Sun Valley transaction which had been used to such a great extent by the Board of Monitors to impede the leadership of the Teamsters Union.

and member, the pivotal consideration is that labor racketeering is criminal activity, to be treated and prosecuted as such. The state penal code sets forth what constitutes criminal behavior and acts. Wherever you find a corrupt labor official, you will find criminal acts and behavior which a state's penal code will encompass.

Labor racketeering is not a unique thing. It is part of general corruption and racketeering. As far back as the turn of the century the famous New York prosecutor, William Travers Jerome, stated:

> This corruption in the labor unions is simply a reflection of what we find in public life. Everyone who has studied our public life is appalled by the corruption that confronts him on every side . . . and this corruption in public life is a mere reflection of the sordidness of private life. . . .[79]

The New York and federal experience shows that whenever there has been a conscientious and serious effort to prosecute labor racketeering, the state and federal penal laws have provided potent and sure weapons. These criminal laws have not been found wanting. Racketeering has only been allowed to flourish when these laws were placed in hibernation. Once activated and utilized the rackets have been broken, the gangsters prosecuted, and the rank and file of the labor union freed from oppression and a policy of free collective bargaining has returned as the dominant feature of federal and state labor policy.

G. Control by the International Union—Trusteeships

1. Control by and Over the Union's Trusteeship

A union trusteeship may be imposed for many varied reasons. It may serve varied purposes. Its impact in any single instance may be great or small. Its objective result to the employees in the shop may be positive or negative. It is the very propensity of the union trusteeship to serve as a tool, and often an extremely effective one, for good or evil, that makes any predetermined standard, other than case by case examination, difficult and dangerous.

2. The Case Law Prior to the Landrum-Griffin Act of 1959

The evolving case law, based upon general principles of common law and equity, has established certain essential road-posts by which the court will determine the validity of a trusteeship imposed upon a local union. These essential prerequisites can be succinctly stated: first, the imposition of the trusteeship must have support by provisions in the union constitution, and the procedure set forth in the union constitution for establishing such trusteeship must be followed.

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[79] As quoted in article by Baker and Stannard, *supra* note 66.

In *House v. Schwartz*,[80] the New York Supreme Court, in striking down the appointment of a trustee over a local, expressed in general a wary attitude towards trusteeships. Moreover, in *Hickman v. Kline*,[81] the Nevada Supreme Court, upon petition by the local, invalidated a trusteeship imposed upon Local 159 by the Painters International Brotherhood, holding that the right of the local to enjoy self-government was not taken from it in accordance either with the provisions of its constitution or with traditional concepts of due process.

In *Spitzer v. Ernst*,[82] an international was enjoined from taking over the property and control of a local joint executive board, even though the board was expressly created by the international union and despite a clear provision in the constitution purporting to give to the general president power to take over control of a local joint executive board whenever the president decided it was in the best interest of the international union.

A second prerequisite to a validly imposed trusteeship is that the provisions and procedures of the union constitution meet the general standard of due process. In *Washington Local 104 v. Int'l Bhd. of Boilermakers*,[83] the Supreme Court of Washington affirmed the injunction and broadened the relief given the local union against interference by the parent union and its officers. In a broad statement applying the standard of due process to the rights of the local and its members, the court states:

> . . . it is within the powers of the courts, and indeed it is their duty, to protect the property rights of the members of such organizations, when they are threatened and endangered, without specific charges and opportunity to be heard.[84]

In *Reiser v. Kralstein*,[85] it was held that a provision of the union constitution providing for imposition of a trusteeship without hearing where there was an emergency, was not applicable in view of the failure of the international to show a bona fide emergency. And in *Neal v. Hutcheson*[86] an action was brought against the United Brotherhood of Carpenters to enjoin the summary suspension of the Greater New York district and the locals therein. In granting the

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80 18 Misc. 2d 21, 188 N.Y.S.2d 308 (Sup. Ct. 1959).

81 71 Nev. 55, 279 P.2d 662 (1955). *Accord*, O'Brien v. Matual, 14 Ill. App. 2d 173, 149 N.E.2d 446 (1957).

82 190 Misc. 47, 72 N.Y.S.2d 570 (Sup. Ct. 1947).

83 33 Wash. 2d, 1, 203 P.2d 1019 (1949).

84 *Id.* at 74, 203 P.2d at 1061.

85 26 L.R.R.M. 2014 (N.Y. Sup. Ct. 1950).

86 160 N.Y. Supp. 1007 (Sup. Ct. 1916).

injunction the court specifically held that the procedure and appeals contemplated in the union constitution did not constitute due process of law.

In *Bricklayers Union v. Bowen*,[87] the court enjoined the defendants from taking over Local 39 stating:

> In other words, the law insures to every member of such an association a fair trial, not only in accordance with the constitution . . . but also with the demands of fair play, which in the final analysis is the spirit of the law of the land.[88]

A third prerequisite for a validly imposed union trusteeship is that the trusteeship must be for a legitimate purpose. Where the trusteeship has been imposed to stifle democratic opposition to the international leadership or policy the courts have struck down the trusteeship.[89]

In *Local 373 v. Int'l Ass'n of Bridge Workers*,[90] the court granted the local a permanent injunction against interference by the international. In looking behind the asserted grounds for the trusteeship, the court stated:

> The excuse put forward by the International was that its action was necessary in order to preserve the local from destruction by internal dissensions. The only internal dissension existing so far as disclosed or even intimated by the affidavits or the proofs, was a dissension as to who was the legally elected business agent of the local. Under the constitution, that was an agent which the members of the local had the right to choose; it was purely a matter for the local, and could have been decided by the local, and in fact it had been decided by the local. . . .

In *Local 118 v. Utility Workers Union*,[91] an Ohio court of appeals vacated the suspension of the local officers of Local 118 and the imposition of the trusteeship, which had been based upon charges that the local officers had violated the national union's constitution by refusing to honor a picket line established around the employer's plant by the joint council with the approval of the national union. The court found that the picket line was established in violation of the no-strike clause of the collective bargaining contract between the local and the employer and therefore violated the public policy of Ohio. The equitable powers of the court has heretofore been utilized to scrutinize the validity of a trusteeship from the vantage point of its

87 183 N.Y. Supp. 855 (Sup. Ct. 1920).

88 *Id.* at 859.

89 Schrank v. Brown, 192 Misc. 80, 80 N.Y.S.2d 452 (Sup. Ct. 1948).

90 120 N.J. Eq. 220, 184 Atl. 531 (1936).

91 162 N.E.2d 524 (Ohio Ct. App. 1958).

real purpose—thus both protecting the local and its members and the rights of the international.

Finally, courts have been able to surmount the major procedural obstacles to correct abuses of union trusteeships by utilizing their equitable powers. The major procedural obstacle raised is the failure of the local union or the members thereof to exhaust their internal union remedies prior to commencing judicial action. In most instances the courts have met and rejected this defense on one of several bases:

1. No exhaustion of internal union remedies is required where the remedy provided is futile and a sham.[92] In *Local 118 v. Utility Workers Union*,[93] the court, in holding that the union member need not exhaust the internal union appeal procedure, stated:

> that where the method of appeal is arbitrary, frivolous, futile or vain and not in accord with the sound principles of justice, the member need not resort to that appeal.[94]

2. No exhaustion is required where the original action against the local violated due process.[95]

3. Where the defendant international answers the complaint on the merits, it has been held to have waived the defense of the failure to exhaust the internal union remedies.[96]

4. The courts have not been troubled in granting injunctive relief even though there exists a little Norris-LaGuardia act within the state. Where the act has been raised as a defense in an action to enjoin the international from imposing a trusteeship it has been rejected.[97]

In total, it appears clear that prior to the passage of title III of the Labor-Management Reporting and Disclosure Act of 1959, the courts had evolved genuine protections against illegal and oppressive trusteeships which, by a case by case utilization of the equitable powers of the court, had rendered not insubstantial protection to the wronged local and its members, while protecting the legitimate interests of the international as the creator of the local and the unifying force in the employer-employee relationship in the particular industry.

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92 Rodier v. Huddell, 232 App. Div. 531, 250 N.Y. Supp. 336 (1931).

93 *Supra* note 91.

94 *Id.* at 531.

95 Fanara v. Int'l Bhd. of Teamsters, *supra* note 9.

96 Masters, Mates & Pilots, Local 2 v. Int'l Masters, Mates & Pilots, 11 Pa. D. & C.2d 75 and 11 Pa. D. & C.2d 86 (Pa. C.P. 1955).

97 Laundry Workers, Local 3008 v. Laundry Workers Int'l, 4 Wis. 2d 542, 91 N.W.2d 320 (1958). See also, Olson, Sp. Trustee, Local 113 v. Miller, 43 L.R.R.M. 2554 (D.C. Cir. 1959), where the court rejected the defense of the primary jurisdiction of the NLRB.

3. Title III of the Landrum-Griffin Act

Title III of the Labor-Management Reporting and Disclosure Act of 1959 represents the first attempt to legislate in the area of union trusteeships.

The act provides four major provisions for the regulation of union trusteeships. Section 301(a) requires every labor organization which has or assumes a trusteeship to report that fact to the Secretary of Labor within 30 days after imposition of the trusteeship and semi-annually thereafter. Willful violation of section 301(a) is declared a crime in section 201(c). The trusteeship report must be signed by the same officers who sign reports under title II and also by the trustees of the subordinate body. The report must include: (1) the date that the trusteeship was established, (2) a detailed statement of purpose for establishing or continuing the trusteeship, and (3) the nature and extent of participation by members of trustee organization in the election of delegates to conventions and in election of national officers. Furthermore, the national union must file the financial report for the trusteed local required under section 201(b).

Section 302 provides the purposes for which a trusteeship may be established and the requisite procedure. The specified permitted purposes are: (1) correcting corruption or financial malpractice, (2) assuring the performance of collective bargaining agreements or other duties of a bargaining representative, (3) restoring democratic procedures, and (4) otherwise carrying out the legitimate objects of such labor organization.

Section 303 expressly prohibits, while a union is under trusteeship, (1) the counting of votes of such local in any convention or election of officers of the national union unless the delegates were chosen by secret ballot in an election where all local members in good standing were eligible to vote, or (2) the national union from taking any funds from the trusteed local except the normal per capita tax and assessments payable by other locals not under trusteeship.

Section 304 provides for civil enforcement of sections 302 and 303. Two methods are provided:

1. Upon written complaint by any member or subordinate body of a labor organization to the Secretary of Labor, the Secretary shall investigate and if he finds "probable cause to believe that such violation has occurred and has not been remedied" he *shall* bring a civil action in any federal court having jurisdiction over the labor organization.

2. Any member or subordinate organization can bring action in a federal court having jurisdiction over the labor organization for such relief as may be appropriate.

Section 304 also provides for a presumption of validity for a period of 18 months of any trusteeship established in conformity with the labor organization's constitution and which was authorized or ratified after a fair hearing by the executive board and/or other body provided in the constitution. Any trusteeship of a duration longer than 18 months is presumed to be invalid.

The legislative history indicates the thrust of these new statutory provisions of federal labor law. Senator Goldwater noted that the act is not confined to a trusteeship imposed by an international but encompasses "every trusteeship imposed by one union over a subordinate body."

Section 304(c) providing the 18 month presumptions was the result of an attempt to avoid setting restrictions making impossible the establishment of a trusteeship. Senator Dodd proposed an amendment requiring a national union to apply to the Secretary of Labor for a 30-day order granting permission to establish the trusteeship. During the 30-day period the Secretary of Labor would hold a hearing and if the national union showed the need for the trusteeship by "clear and convincing proof," the Secretary of Labor could order the trusteeship continued for a period no longer than one year. The amendment was rejected.[98]

The provision granting power to the Secretary of Labor to make investigations and institute civil action is a rejection of Senator Kennedy's proposal which would have placed enforcement in the hands of the Labor Board.

A comparison of the provisions of title III with the pre-existing case law, examined above, reveals:

1. Section 301 requiring initial and semi-annual reports to the Secretary of Labor is, of course, a new and novel provision. At one stroke it greatly increases the paper work to be done by the union and floods the Department of Labor with heaps of additional information about the administration of unions.

2. Section 302 dealing with the legitimate purposes of a trusteeship is essentially a codification of the controlling case law discussed above. It probably does not operate to change the existing law. Section 302 also incorporates the case law rule in stating that the trusteeship must be established and administered in accordance with the union constitution and bylaws.

3. Section 303 provides two express prohibitions which have not been articulated in the case law. The prohibition against voting delegates of the trusteed local to the international convention, unless

[98] 105 Cong. Rec. 5984-85 (daily ed. April 24, 1959).

elected by secret ballot by all local members in good standing, is a recognition that the trusteed local can be used as an instrument by the international leadership to guarantee continuation in office.

4. Section 304, on its face apparently widens the pre-existing remedies against oppressive or illegal trusteeships by providing that the Secretary of Labor shall investigate any reported violation of the law, and if he finds probable cause, *shall* bring action in the *federal* court; and by opening the federal court to an action against a trusteeship by either the individual member or the local. As subsequently shown, this provision has given way to conflicting opinions by federal district courts and, in total, may actually diminish the rights possessed by the individual members and the local prior to the act.

Section 304 introduces a novel element in providing an 18 month presumption of validity. It appears obvious that the intent was to strike down those trusteeships that have been continuing for many years. In the process the act does seem in variance with the attitude of several of the state courts, quoted above, that look with extreme caution upon all trusteeships. In any event, it should be noted that the presumption only operates if the trusteeship was established in accordance with the union's constitution and authorized or *ratified* by a fair hearing. There is no requirement that the fair hearing be held prior to imposition of the trusteeship.

4. Post Landrum-Griffin Act Case Law

The limited case law under title III of the act has already indicated several difficult and confusing procedural problems arising from the provisions of the act.

a. Area of Dispute

The area of greatest dispute involves the enforcement provisions of section 304 and whether the provision for investigation by the Secretary of Labor and institution of action by him must be exhausted before the individual member or union body can bring action in the federal court.

In *Rizzo v. Ammond,*[99] action was brought by the members of Local 1262 of the retail clerks alleging wrongful imposition of trusteeship over their local by the international. The complaint alleged that the hearing was a sham—no notice was given, and local officers were not permitted to be present, personally or by their attorney. The court dismissed the action on the grounds of lack of jurisdiction. The court

[99] 182 F. Supp. 456 (D.C. N.J. 1960). *Accord,* Flaherty v. McDonald, 40 Lab. Cas. ¶ 66,514 (S.D. Cal. 1960).

specifically held that there was no jurisdiction under the Landrum-Griffin Act since it was a prerequisite that the individual member exhaust the remedy provided through and by the Secretary of Labor before he could bring action in the federal court under Section 304.

In contrast, is the opinion in *Local 28, IBEW v. IBEW*.[100] Here action was brought to terminate the trusteeship over Local 28. Various misappropriations of local's funds, violation of bylaws, and other various wrongs were alleged against defendant Goidel, IBEW's international representative. The complaint specifically alleged violation of the trusteeship provisions of title III, section 302 of the Labor-Management Reporting and Disclosure Act. After finding jurisdiction under the act, irrespective of diversity or jurisdictional amount, the court flatly rejected the decisions in *Rizzo* and *Flaherty*, and held that the union member did not have to go first to the Secretary of Labor before bringing action in the federal district court.

As a practical matter the impact of the *Rizzo* and *Flaherty* decisions may be to actually *reduce* the rights of the individual members and trusteed local. This is true as far as their rights in the federal district court are concerned. It is yet to be decided whether the holding of these cases will be applied to actions commenced in the state court.

b. Jurisdiction over the Subject Matter

The opinion of the court in the *Local 28, IBEW* case,[101] makes it clear that the 1959 act itself establishes the jurisdiction of the court over union trusteeships, as a federal question arising under federal law, irrespective of any requirement of diversity or jurisdictional amount. The decision in *Flaherty v. McDonald*[102] is not at variance on this point since there the court indicated that jurisdiction under the federal act failed only because of a failure to exhaust the administrative remedy provided by the act, *viz;* investigation by the Secretary of Labor. Though less clear, *Rizzo v. Ammond*[103] appears to proceed on this basis also.

c. Jurisdiction over the Person

Both the *Flaherty* and *Rizzo* cases represent excellent illustrations of the insurmountable procedural difficulties of federal court jurisdiction over union trusteeships in the absence of statutory jurisdiction. These difficulties include the requirement of diversity[104] (perhaps avoidable through the device of a class action);

100 40 Lab. Cas. ¶ 66,578 (D.C. Md. 1960).

101 *Supra* note 100.

102 *Supra* note 99.

103 *Ibid.*

104 See Underwood v. McBride, 45 L.R.R.M. 3154 (D.C. Del. 1960).

the requirement of the jurisdictional amount (held not satisfied in *Rizzo*); personal jurisdiction over individual defendants, non-residents of the state in which the federal court sits and not personally served within that state; and necessity of service upon a representative of the international within the state in his representative capacity.

In addition, a common problem in both the state and federal court proceedings on union trusteeships under the act or common law, exists in that the international is often multi-state in operation and activities, and the local may also possess this characteristic. This fact gives rise to the problem of the extra-territorial jurisdiction of the state or federal district courts. As a result, the policy of a uniform application of an order is defeated by the necessary confines of the order to the territorial jurisdiction of the court. The issue is touched upon by the court in the *Rizzo* case where the court held that it could not through a receiver assume possession of its assets and property located beyond the jurisdiction of the court, or to direct the international's activities beyond the court's territorial jurisdiction.

This holding may well lead to the situation where different federal courts reach contrary conclusions as to a trusteeship over a particular local. It is even more likely to result in differing conclusions as to trusteeships or disaffiliations of locals in the same international arising from the same circumstances.

d. The Problem of Federal Pre-emption

Finally, there is still the problem of federal pre-emption arising from the passage of title III of the Landrum-Griffin Act. Section 603(a) of the act appears to provide for no federal pre-emption. It states:

> (a) Except as explicitly provided to the contrary, nothing in this Act shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and, except as explicitly provided to the contrary, nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State.[105]

It should be noted that the provision speaks of the "*law* of any state" and it may be argued that it does not keep intact the common law and equity powers heretofore exercised by the state court. In any event in the only reported case on the issue to date,[106] the court denied

[105] 73 Stat. 540 (1959), 29 U.S.C. § 523 (Supp. I, 1959).

[106] Kuka v. Hoffman, 45 L.R.R.M. 2284 (N.Y. Sup. Ct. 1959).

the motion for an injunction pendente lite to restrain the Upholsterers International Union from appointing or attempting to appoint a trustee over Local 601 on the grounds, *inter alia,* that the dispute as to whether the court was without jurisdiction because of title III of the act of 1959 could not be decided on motion papers.

The operation of title III as revealed by the report of the Bureau of Labor-Management Reports for the nine month period ending at the fiscal year June 30, 1960, reveals that the act has had virtually no effect whatsoever in eliminating the charged abuses in trusteeships which were in large measure responsible for the passage of title III.

The total number of alleged violations under sections 301, 302, and 303 is 76.[107] This includes violations relating to the adequacy of the reports required under section 301. No legal action has been commenced by the Secretary of Labor to declare a trusteeship unlawful.[108] Of the 76 investigations, 36 were closed and 43 were still pending as of June 30, 1960. "Many" of the 76 complaints filed with the Bureau concerned trusteeships of the Teamsters International.[109] Although "a thorough investigation of the financial records of the Teamsters' locals under trusteeship as well as the records of the international"[110] was made, no action has been commenced by the Secretary of Labor, indicating either the legality revealed by such financial records or the reluctance and inability of the Secretary of Labor to act.

Although the reports filed with the Bureau revealed that of the 592 reporting trusteeships, 50% were at least eighteen months old and 20% were more than ten years old,[111] no action has been taken by the Secretary of Labor against such entrenched trusteeships which, under the law, are presumed to be unlawful. There have been no reports of voluntary termination of the long-term trusteeships which were so effectively used by proponents of title III to obtain its passage in Congress.

G. Control by the Courts—The Monitorship System

The final and most drastic form of control over the international, the local and the members is the court monitorship. This is the system that has existed within the Teamsters International since 1957. Examination of the monitorship system over the Teamsters International reveals the extreme nature of this arrangement and the

107 *Supra* note 58, Table 9, p. 65.
108 *Id.* at 61.
109 *Id.* at 33.
110 *Id.* at 34.
111 *Id.* at 32.

extreme impact upon the relationship and power exercised in the international, the local and the membership.

The Teamster monitorship arose out of a compromise settlement of the legal challenge to the 17th National Convention and national election of the Teamsters scheduled for September, 1957. The background for the legal challenge to the leadership of the Teamsters International had been provided through the highly publicized exposé of the McClellan Committee which, in large measure, had concentrated upon the Teamsters' then General President David Beck and his successor James Hoffa.[112]

Thirteen New York area rank and file members of the Teamsters commenced an action employing an attorney well known for representing employers in labor relations matters.[113] The action commenced by these rank and file members, relying upon the revelations before the Senate McClellan Committee, alleged violations of the union constitution and rigging of the September convention, and prayed for an injunction against the convention and for the appointment of a receiver or master to supervise the intralocal balloting and the convention. A preliminary injunction was issued by the district court a day before the scheduled convention,[114] but was vacated by the court of appeals. The convention was held and James Hoffa and his slate were elected. The plaintiffs amended their complaint and attacked the convention proceedings at which the defendants, Hoffa and most of his slate, had been elected. The new order of the district court, as modified by the court of appeals, restrained the Hoffa slate from taking office and restrained the effectiveness of certain constitutional amendments which had been passed at the convention.

After these preliminary proceedings, a twenty-two day trial commenced in late November, 1957. After the plaintiff's case was in and prior to the defendant union's presentation, a settlement was agreed upon by the parties. This was subsequently agreed to by the court and incorporated into a consent decree. The major provisions of this decree, overriding the established structure and procedure of the union and any contrary provisions in the union constitution and bylaws, included provisions that:

a. The Hoffa slate would take office "provisionally."

b. A Board of Monitors would be established consisting of a

112 "Hearings Before the Senate Committee on Improper Activities in the Labor or Management Field," 85th Cong., 2d Sess. (1957).

113 The attorney, Godfrey P. Schmidt, is a New York lawyer, primarily representing employers in the labor relations field.

114 District Court Judge F. Dickinson Letts issued the preliminary injunction on September 28, 1957. The convention was scheduled for September 29, 1957.

union designated monitor, a plaintiffs' designated monitor and an "impartial" monitor to be jointly chosen.

c. A series of reforms would be undertaken by the general executive board in cooperation with the Board of Monitors encompassing financial and accounting procedures, elimination of conflict of interests, elimination of unjustifiable trusteeships, and protection of democratic rights.

d. A new election of officers shall take place at any time after one year from the effective date of the consent decree.

e. Compensation for the Board of Monitors as determined by the court shall be paid by the Teamsters International.

f. The Teamsters International shall pay the counsel fees and expenses of the plaintiffs, subject to approval of the court.

A naked proposal to give the Board of Monitors broad authority to supervise the union and compel compliance with its recommendations was not inserted into the decree.[115]

The original impartial chairman of the Board of Monitors, Judge Nathan Clayton, resigned after six months. Interestingly, his letter of resignation indicates a series of investigations or studies undertaken by the Board of Monitors with the only definitive aspects being the reduction of trusteeships from 107 to 61 and the conclusion that the reports of the IBT officers indicated no current conflict of interest. However, the separate report of the plaintiffs' Monitor Schmidt, urged additional "monitor initiative" to eliminate abuses. The union monitor Wells called for the Board of Monitor's scrupulous observance of the international constitution and that it refrain from usurping power not given to it under the consent decree.

With the appointment of Martin F. O'Donoghue as the new impartial chairman, the until then smooth operation of the Board of Monitors was drastically changed. Within a month, the monitors had established their own staff including an investigator and an executive assistant. The Board of Monitors began issuing "orders of recommendation" which ran the whole gamut of the operation of the Teamsters International from financial records to alleged election violations.

The plaintiffs' monitor and Mr. O'Donoghue, fearing that these orders of recommendation were not being carried out by the union, moved in court to have the monitors granted certain mandatory powers over the Teamsters' general executive board and to postpone the new

[115] The initial report of the Board of Monitors indicates that the union rejected a proposal which would have given the Board of Monitors broad supervisory power over the entire operation of the union. Initial Report of the Board of Monitors, CA #2361 —1957.

election which had been called by the Teamsters' executive board. The broad decision issued by District Judge Letts found that the monitors had mandatory powers and could, in fact, pursue a policy of a general cleaning-up of the union.[116] The court further changed the consent decree by deleting the provisions that the Teamsters could call a new election after the expiration of one year. Instead, the court inserted a provision giving the Board of Monitors the sole power to recommend a new election.

Upon appeal to the court of appeals, the Board of Monitors, rather than rely upon the concept of mandatory powers, rested their claim upon the obligation of the union to obey the spirit of the consent decree and the power of the district court to issue orders to compel the union to comply with the recommendations of the monitors in specific matters. The decision of the court of appeals[117] sets down a significant framework for the operation of the Board of Monitors. By its opinions: (a) the consent decree was upheld; (b) the court declined to pass upon whether the union was acting in "bad faith," as had been found by Judge Letts; (c) the Board of Monitors was strictly limited to consultative and recommending functions. The latter function of the Board of Monitors could take place without hearing the defendants; and (d) the court affirmed Judge Letts' postponement of the proposed Teamster International election. But the power to recommend such a new convention was placed in the district court rather than with the Board of Monitors.

Since the court of appeals decision, the Board of Monitors has continued in its attempt to exercise increasing power and authority over the Teamsters International. In the summer of 1959, the monitors attempted to exercise subpoena powers to look at certain books of a midwest local of the Teamsters. The court of appeals decision, above referred to, approved the district court's order for an audit of these books. The Board of Monitors has also attempted to conduct independent hearings. The right to conduct such hearings has been vigorously opposed by the union.

One important result of the court of appeals decision is that subsequently, to a large extent, the court has been functioning as a supervisor of the consent decree together with the district court. In fact at several stages of this litigation, affidavits have been directly submitted to the court of appeals which had not appeared in the proceedings below. The union's attempt to obtain a stay and for a writ of certiorari to the United States Supreme Court was unsuccessful. But it did result in a memorandum by Mr. Justice Frank-

[116] Memorandum Opinion, CA #2361—1957 (December 11, 1958).

[117] 269 F.2d 517 (D.C. Cir. 1959).

furter,[118] which together with the consent decree and the opinion of the court of appeals, forms the triumvirate of written documents under which the Board of Monitors presently operates.

The next battle scene was staged over the employment by the Board of Monitors of an independent law firm. This law firm not only was employed for the purpose of defending the various actions commenced by the union to restrain the Board, but also to read, evaluate and report on the approximately 20,000 pages of testimony taken before the McClellan committee. Presumably, this was ordered in order to prepare certain recommendations to be made by the Board of Monitors. The court of appeals vacated the district court's order permitting the employment of such a law firm and held "that the board of monitors may engage the services of said firm of lawyers to assist them *in litigation prudently and reasonably* deemed by the board to be required in performance of the duties of the board." The appellate court also denied the Board of Monitors' chairman any exclusive authority with regard to supervision of the law firm.

The next attack by the Board of Monitors upon the Teamsters International leadership was the most extreme and direct. In a report issued in September 1959, known as the Sun Valley Interim Report, the Board of Monitors accused the union president, Hoffa, of breach of his fiduciary obligation and of investing union funds for his own purposes. The monitors asked the district court to remove Hoffa as general president of the union if the court agreed with its report.[119] In this dispute a collateral matter came to the forefront in the disqualification of Judge Letts, the district court judge, to hear the Board of Monitors' motion. Judge Letts disqualified himself on the basis of an affidavit filed by Mr. Hoffa in which it was stated that the Judge had announced to the press that he intended to remove Hoffa because of the latter's efforts to place a certain individual on the Board of Monitors.[120]

Preliminarily, Hoffa attempted to enjoin the hearings before the federal district court on the monitors' motion to remove him as the president of the Teamsters Union. The district judge denied the motion and in June, 1960, the court of appeals held that the denial was not an appealable order. However, the court of appeals did restore to the district court docket two requests for mandamus and prohibition to restrain the district court judge from proceeding to trial on the Sun Valley issue.

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118 English v. Cunningham, 361 U.S. 905, (1959).

119 In defense, Mr. Hoffa stated that the transaction was legitimate union business, that the funds were not held as collateral and, in any event, the consent decree did not grant the district court the power to remove any of the elected officials who had not formally taken office because of the decree.

120 The individual in question was William Bufalino.

Other matters in the continuing and unrestrained conflict between the Teamsters Union leadership and the Board of Monitors show the extent of this conflict and the effect upon the relationship of the international with its locals and members arising from this Board of Monitorship system. Thus the Teamsters International has been unsuccessful in preventing the Board of Monitors from "making its case" by issuance of general press releases on matters which were not of public record. Orders by District Judge Letts permitting the Board of Monitors to hire additional attorneys for its staff and to have the chairman direct the monitors' staff and direct the law firm were both subsequently reversed by the court of appeals.

The battle between the union leadership and Mr. O'Donoghue, chairman of the Board of Monitors, was intensified when President Hoffa made a motion in the district court to have Chairman O'Donoghue removed from his position because of a question of conflict of interest under Canon 37 of the Canons of Professional Ethics. The conflict of interest arose from the fact that Mr. O'Donoghue had previously represented the Teamsters Union and Mr. Hoffa in prior and earlier stages of the related litigation arising out of the monitorship. The information which Mr. O'Donoghue obtained while representing his client, it was argued, would clearly result in a conflict of interest situation now that, under the leadership of Mr. O'Donoghue, the Board of Monitors had moved in court to have Mr. Hoffa removed as president of the union.

The situation became more complex, more expensive, and in certain aspects slightly ridiculous, when within the past year a full grown intramonitor conflict has arisen. This conflict came into the open when the chairman, Mr. O'Donoghue, unsuccessfully attempted to have the plaintiffs' monitor, Lawrence T. Smith,[121] second the report dealing with the alleged violations of the consent order by Mr. Hoffa. Monitor Smith refused to second the report. The dispute hit a high-point when District Judge Letts removed Mr. Smith as a monitor on March 30, 1960, accusing Mr. Smith of not having his "heart in the assignment." Almost simultaneously, the course that Godfrey Schmidt had been following became entangled with this dispute. The resignation of Mr. Schmidt as the attorney for the plaintiffs was accepted by 8 of the 12 plaintiffs. Mr. Schmidt had lined up with Chairman O'Donoghue in the dispute against Monitor Smith. The plaintiffs, who accepted Godfrey Schmidt's resignation, immediately hired another New York attorney and supported Mr. Smith. But Judge Letts, who quite clearly sided with Chairman O'Donoghue, refused to permit the substitution. His order was vacated by the court of appeals in May, 1960.

[121] Mr. Smith had replaced Godfrey P. Schmidt as the plaintiffs' monitor.

Those plaintiffs who supported Mr. Schmidt nominated the former FBI agent, Terrence McShane, as the successor to Mr. Smith on the Board. Judge Letts immediately appointed McShane, again indicating his full support for the O'Donoghue-Schmidt faction among the monitors and the plaintiffs. But again the court of appeals disagreed vigorously with the action taken by District Judge Letts. They first stayed the order removing Smith as a monitor, and subsequently set aside the order removing him on the grounds that the consent decree had been violated in that the removal had taken place without notice, hearing and appeal, which are required under paragraph 2 of the consent decree. Finally, it might be noted that the monitor representing the union leadership was changed from Monitor Maher to Mr. William Bufalino.

This continual battle on each and every aspect of the relationship between the Board of Monitors and the Teamsters International and on each and every aspect of any legal question arising therefrom clearly indicates the extent to which there is a basic and irreconcilable inability for the Board of Monitors and the union leadership to operate together.

The history of the Board of Monitors' control over the Teamsters International shows a pattern of an increasingly aggravating conflict and schism between the Board of Monitors and the Teamsters International leadership. The impact of this upon the membership of the Teamsters is clear. There are no fundamental reforms that have been accomplished. The plaintiffs, who constitute a small, in fact infinitismal number of members of the Teamsters Union, have themselves on numerous occasions been split as to who should represent them and who should be their monitor on the Board of Monitors.

More fundamental is that the entire concept of monitorship over a huge and powerful trade union like the Teamsters International is doomed to failure if one is to speak in terms of accomplishing worthy objectives. The New York Times of January 2, 1961, in discussing the anticipated ending of the Monitorship, reports as follows:

> The Board of Monitors was soon bogged down with Teamsters, law suits, intra-mural disputes and personnel turn-over .... Court action has been hot and heavy. More than 100 motions have been heard by Judge Letts, 40 appeals have been taken to the Court of Appeals and 3 appeals have reached the Supreme Court. Teamster officials estimate that legal expenses and the $25 an hour monitor's fee, and their expenses, have cost the union treasury more than $1,500,000. The dispute has evolved to the point where 5 factions are concerned. They are Mr. Hoffa and the Teamsters Union, eight of the original 13 Teamster insurgents; four other insurgents; a lone insurgent; and a latecomer group of intervenors, representing locals with 50,000 members. . . . If Judge Letts is eventually satisfied

> with Teamster union reforms and orders a new convention, it will mean that the question of Mr. Hoffa's eligibility for union office will be left to the membership.

Note well the last line of the article. "The question of Mr. Hoffa's eligibility for union office will be left to the membership." That's where it belonged in the first place.[122]

CONCLUSION

The problem of perfecting an equitable and just balance of controls between an international union, its locals and the members of the union will never be solved by the anarchic and archaic methods by which labor union problems have been approached in the last several decades.

The anarchy that exists in this field is part and parcel of the ill-conceived and ill-organized methods of dealing with all labor problems. At best, there are patchwork attempts to remedy existing evils and little, if any, heed is paid by legislators and officials, both from within and without the trade union movement, to the basic ills which plague our economic life.

The many controls resulting from federal legislation, state legislation, federal court decisions, state court decisions, federal administrative agency rulings and state administrative agency rulings have not solved the problem of curbing evil people, whether they be racketeers in industry or labor. Nor have they solved the problem of providing quick and simple justice either to the worker or to the employer, or adequately safeguarded the pension and welfare funds, upon which workers depend for their future. Nor have they provided a workable system of democratic controls of trade union rights. A method has not yet been found of meeting national emergency strikes. These controls have not protected employers and workers against cutthroat competition on the part of the states which have restrictive right-to-work laws. Nor do they adequately meet the problem of protecting governmental employees and hospital employees from the abuses inherent in denying them the right to strike without giving them a proper substitute forum in which to obtain a redress of grievances that would place them on a parity with other workers.

What is required is not more legislation, but rather an intensive, objective federal study of our existing labor laws, with the end in view of replacing present anarchy with an integrated system of labor law that will bring order out of chaos.

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122 As this article goes to press, rulings by Judge Letts granted the Teamsters Union's motion, directed a convention and election, ordered the monitorship dissolved, and denied counsel fees for the attorneys from the union treasury. New York Times, March 1, 1961.